

Panaji, 20th September, 2017 (Bhadra 29, 1939)

SERIES II No. 24

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

### EXTRAORDINARY

### No. 3

#### GOVERNMENT OF GOA

Department of Elections

Office of the Chief Electoral Officer

#### Notification

No. 8-18-2017/ELEC/4026

The following Order dated 9th September, 2017 of the Hon'ble Governor of Goa and the Opinion dated 1st August, 2017 from the Election Commission of India, New Delhi are hereby published for general information.

Place: Panaji-Goa. *Narayan S. Navti,*  
Dated: 20-09-2017. Additional Chief Electoral  
Officer.

#### BEFORE THE GOVERNOR OF THE STATE OF GOA

#### Order

By this order, I dispose off the petition filed before me by Shri Shirish Q. Kamat, S/o. Quesso Kamat, R/o H. No. 1-E, St. Jose De Areal, Salcete, Goa seeking disqualification of Shri Digamber V. Kamat, Member of the Legislative Assembly of Goa from Margao Assembly Constituency, under Article 190 {(3)(a)}, Article 191 {(1)(a)} & Article 192 of the Constitution of India r/w Section 9-A of the Representation of Peoples Act, 1951.

B) On receipt of the above petition, I had sought the opinion of the Election Commission of India in the matter, as required under Article 192(2) of the Constitution of India. I have since received the opinion of the Election Commission

of India vide communication No. 113/7/(G)/ECI/ /LET/FUNC/JUD/2017/Registry/854 dated 1st August, 2017.

C) The opinion of the Election Commission of India under Article 192(2) of the Constitution of India is reproduced as below:-

"This is a reference dated 17-5-2017, received from the Governor of Goa seeking opinion of the Election Commission of India under Article 192(2) of the Constitution of India, on the question whether Mr. Digamber Vasant Kamat, a Member of the Legislative Assembly of Goa from Margao Assembly Constituency, has become subject to disqualification, for being member of that Assembly, under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

2. In the said reference, the question of disqualification arose because of a petition dated 28th April, 2017, filed by Shri Shirish Kamat, Salcete-Goa (hereinafter the "Petitioner"), whereby the Petitioner has sought disqualification of Shri Digamber Vasant Kamat (hereinafter the "Respondent") under Article 190(3)(a), Article 191(1)(a) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951 (hereinafter the "1951 Act").

3. The facts of the case, as disclosed in the said petition, are as follows:

4. The Respondent established a Partnership Firm named M/s. Bharat Construction, Engineers & Builders (hereinafter "Partnership Firm"), on 9th December, 1980 and got it registered



on 6th January, 1982 with the Civil Registrar, Goa. At the time of the registration, the Partnership Firm consisted of five partners, namely, the Respondent and his brother Mr. Gurudas Kamat, Mr. Kiran Vasant Naik and his brothers Mr. Vinod Naik and Mr. Santosh Naik. The Partnership Firm was reconstituted subsequently from time to time. The records obtained by the petitioner under the Right to Information from the office of the Civil Registrar, Salcete show that the Partnership Firm was reconstituted subsequently from time to time. The change in partners are detailed out as follows:

Date	Partners
19th October, 1989	1. Shri Kiran Vasant Naik. 2. Smt. Asha Kamat. (Respondent's wife).
30th November, 1993	1. Shri Kiran Vasant Naik. 2. Respondent.
22nd January, 1996	1. Shri Kiran Vasant Naik. 2. Smt Asha Kamat. (Respondent's wife).
1st April, 2005	1. Shri Kiran Vasnt Naik. 2. Shri Satish Lavande. (Respondent's brother-in-law).

Thus, since 1st April, 2005, the Partnership Firm consisted of two partners, namely Shri Kiran Naik and Shri Satish Lavande.

5. The Partnership Firm was registered with the Goa PWD/Water Resources Department (WRD) under three categories, namely (a) Water Supply & Waste Water Disposal, (b) Buildings and (c) Roads, Bridges and Land Development. The details of the renewed registration of the Partnership Firm as a contractor under the above mentioned categories are as follows:

The Partnership Firm was registered as a Class II contractor under the category of Water Supply & Waste Water Disposal on 06th July, 1984 [Registration No. WS&WWD (II-6)/84]. The registration of the Partnership Firm as a contractor under the same category was renewed on 11th February, 1999 [Registration No. WS&EED (II-15)/99] till 30th September, 2001. This registration was further renewed as a Class I-B contractor [Registration No. WS&WWD (I-B-24)/2002] vide letter dated 02nd September, 2002 till 01st September, 2007.

The registration of Partnership Firm as a contractor under the category of Hydraulics and Irrigation was renewed as a Class I-B contractor

[Registration No. H&I (I-B-1)/91] vide letter dated 24th August, 1993 till 02nd April, 1998. The registration under the same category was renewed again as a Class I-B contractor [Registration No. H & I (I-B-1)/99] vide letter dated 12th February, 1999 till 02nd February, 2003. This registration was further renewed as a Class I-A contractor (Registration No. H&I (I-A-1)/2003] vide letter dated 21st October, 2003 till 21st October, 2008.

6. A company, named Apollo Engineers and Contractors Pvt. Ltd. (hereinafter "Company") was incorporated on 13th February, 2006. Clause 33 of the Articles of Association (AOA) of the Company states that the Company has two directors, namely, Shri Kiran Naik and Shri Satish Lavande. A Memorandum of handing over and taking over was executed on 6th January, 2007, which stated that the said Partnership Firm was taken over by the Company on 13th February, 2006 along with all assets, liabilities and enlistment with the PWD in different categories. Another Memorandum was made on 6th January, 2007 stating that the benefits, liabilities and agreements (including all contracts entered or received by the Partnership Firm from the PWD/WRD) of the Partnership Firm were transferred to the Company on 13th February, 2006.

7. The Partnership Firm vide its letter dated 5th June, 2006 requested the PWD, Altinho, Panaji to convert the name of the contractor from that of the Partnership Firm to the Company.

8. The PWD vide its letter dated 24th September, 2007 renewed and converted the registration of the Partnership Firm in the name of the Company under the Water Supply and Waste Water Disposal category as Class I-B contractor. This registration was valid till 01st September, 2012.

Similarly, the registration of the Company under the category of Water Resources Work including Hydraulics & Marine Works (WR) as a Class I-A contractor [Registration No. WR (I-A-1)/2003] was extended vide letter dated 27th June, 2007 till 21st October, 2008. The registration of the Company under the same category was renewed as a Class I-A contractor [Registration No. WR (I-A-1)/2003] vide letter dated 16th September, 2008 till 21st October, 2013.

Thereafter, the registration of the Company under the Water Supply and Waste Water Disposal category was renewed as a Class I-B contractor [Registration No. WS&WWD(I-B-24)/2013] vide letter dated 7th January, 2013 till 1st September, 2017.

9. In the meantime, there was a change in the directorship of the Company. Form 32 shows that



Shri Yogiraj Kamat, son of the Respondent, was appointed as the Director of the Company on 25th June, 2013 and on the same day, Mr. Satish Lavande ceased to be the Director of the Company.

10. After the change in the Directors of the Company, the registration of the Company under Water Supply and Waste Water Disposal category was further renewed as a Class I-B contractor [Registration No. WS&WWD (I-B-24)/2014] vide letter dated 10th November, 2014 till 01st September, 2017.

Also, the registration of the Company under Class I-A in the category of Water Resources Work including Hydraulics & Marine Works (WR) was extended vide letter dated 21st January, 2014 till 21st October, 2018.

11. The Respondent contested and was elected as an MLA on various occasions. The details of the election are produced below:

Date of nomination	Date of Election
November/December, 1994	December, 1994.
May/June, 1999	June, 1999.
May, 2002	30th May, 2002.
May, 2005	May, 2005.
April, 2007	April, 2007.
The Respondent was sworn-in as the Chief Minister of Goa on 8th June, 2007. He served as the CM till 06th March, 2012.	
19th February, 2017	11th March, 2017.

12. The Petitioner has placed reliance on the opinion dated 10th January, 2017 tendered by the Commission in the case of disqualification of Shri Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly to state that the Respondent in this case is disqualified under Section 9A of the 1951 Act. The Petitioner has also relied on the case of *Sewaram v. Sobaran Singh*, AIR 1993 SC 212. The Petitioner has stated that Shri Kamat has subsisting contracts with the Government through his proxies, Smt. Asha Kamat (his wife) and Shri Yogiraj Kamat (his son).

13. The factual and legal averments raised by the Petitioner are summarized as follows:

- (a) The Respondent should be disqualified for corrupt practices under Articles 190(3)(a) and 191(1)(a) of the Constitution of India read with Section 8A of the 1951 Act for allotting works to the Company at a price more than 50% above the estimated cost of tenders during the period when the Respondent was the Chief Minister of Goa.

- (b) The Respondent should be disqualified for subsisting government contracts under Section 9A of the 1951 Act as he continued with the work orders of the Company through his proxies, namely, his wife Smt. Asha Kamat, his brother-in-law Shri Satish Lavande and his son Shri Yogiraj Kamat.

14. The findings of the Commission on the questions raised by the Petitioner are as follows:

- i) The Petitioner has argued that the Respondent is disqualified under Section 8A of the Act of 1951 as the Company was awarded government contracts at a price more than fifty percent above the estimated cost of tenders during the period when the Respondent was the Chief Minister of Goa.
- ii) The determination of disqualification under the Section 8A of the Act of 1951 requires a prior order of the High Court under Section 99 of the said Act, finding a person guilty of commission of corrupt practice, as defined in Section 123 of this Act. The relevant provision is produced below:

*8A. Disqualification on ground of corrupt practices— (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:*

*Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.*

*(2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.*

*(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.*



The Petitioner has not produced any order to such effect by any High Court and hence, the Commission is of the view that the Respondent cannot be disqualified under Section 8A of the Act of 1951.

The Petitioner has further argued that the Respondent is disqualified under Section 9A of the Act of 1951. The Petitioner has stated that the Company was awarded a contract dated 17th December, 2016 by PWD, Margao-Goa and the same was subsisting even after the Respondent was elected in March, 2017. It is argued that the Respondent is acting as a Director of the Company through the proxy of his son, Shri Yogiraj Kamat and thus he is disqualified for subsisting contracts under Section 9A of the 1951 Act.

The Petitioner has also placed reliance on the opinion tendered by the Commission in the case of disqualification of Shri Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly and on the case of Sewaram v Sobaran Singh, AIR 1993 SC 212 to contend that the Respondent be disqualified for subsisting contracts entered by the Company with PWD. The Petitioner has stated that the Respondent has subsisting contracts with the government through his proxies, Smt. Asha Kamat (his wife) and Shri Yogiraj Kamat (his son). He has stated that just as the Commission held that Shri Umashankar was managing the affairs of his Company/Partnership Firm through his proxies, similarly in this case the Respondent has entered into contracts with the State Government through his wife and son.

15. It may be noted that in the case of Shri Umashankar, the Commission, on the basis of the evidences before it, observed that he was deeply involved in the affairs of the Company/Firm in question. In fact, he was also director of the Company for some period of time after his election. More importantly, it was found that payments for the Company's contracts with the PWD were in reality received by Shri Umashankar's sole proprietorship firm, thereby meaning, that Shri Umashankar was the sole beneficiary and recipient of the payments of all the contracts entered between the PWD and the Company. Based on these facts, the Commission was of the view that the Company was a facade and Shri Umashankar was misusing its separate juristic identity to evade legal obligations under law, making it a fit case for lifting of corporate veil. Thus, as the payments for the contracts entered between the Company and PWD was received by Shri Umashankar, it meant that he had subsisting contracts with the

government after his election and hence, he was disqualified under Section 9A of the 1951 Act. Similarly, the Supreme Court in Sewaram case disqualified him under Section 9A of the Representation of the People Act, 1951 on basis of his correspondence with the government regarding the contracts even after his election. Thus, neither the rationale nor ratio of the decisions of the Commission in Uma Shankar's case (supra) and of the Supreme Court in Sewaram's case (supra), relied upon by the petitioner, are applicable in the facts and circumstances of the present case.

16. It may further be noted that the High Court of Andhra Pradesh in the case of S.A.K. Mynoddin v. The Chief Election Commissioner, Secretariat Buildings, Hyderabad and Ors., 2013(1)(ALT 292, did not disqualify the MLA on the facts that he tendered his resignation from the post of Managing Director, intimated the same to the Registrar of Companies and transferred all his shares to his wife prior to the filing of nomination papers. In the present case, no evidence has been produced to show that the Respondent was personally associated with the Company or its affairs in any manner. Hence, in the given facts, the Respondent does not attract disqualification under Section 9A because no evidence is produced to either show that the Company is managed by him or that he has entered into a government contract in the course of his business or trade.

17. The disqualification under Section 9A of the Act of 1951 is attracted when 'there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.' It has been laid down by the Supreme Court in Election Commission of India v. Saka Venkata Rao, AIR 1953 SC 210 that Article 192 read along with Articles 190(3)(3) and 191(1) is applicable only to disqualifications to which a member of the State Legislature becomes subject after he is elected as such member. A similar view was taken by the Supreme Court in another case of Brundaban Nayak v. Election Commission of India and Anr., AIR 1965 SC 1892 where the Court while referring to the ratio laid under the judgement of Saka Venkata Rao said that the disqualification, to which Article 191(1) refers, must be incurred subsequent to the election of the member. The relevant paragraph is as thus:

"7 .... It is well-settled that the disqualification to which Art. 191(1) refers, must be incurred subsequent to the election of the member. This



conclusion follows from the provisions of Art. 190(3)(a). This Article refers to the vacation of seats by members duly elected. Sub-Article (3)(a) provides that if a member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in Clause (1) of Art. 191, his seat shall thereupon become vacant. Incidentally, we may add that corresponding provisions with regard to the disqualification of members of both Houses of Parliament are prescribed by Articles 101, 102 and 103 of the Constitution. It has been held by this Court in *Election Commission, India v. Saka Venkata Subba Rao and Union of India-Intervener* that Articles 190(3) and 192(1) are applicable only to disqualifications to which a member becomes subject after being elected as such."

It is observed that as per the records produced by the Petitioner, the Respondent was neither a Director nor a shareholder, or promoter of the Company at any given point of time. Thus, there are no subsisting contract of the Respondent with the State Government in the course of his trade or business. Hence, the Respondent has not incurred disqualification under Section 9A of the Act of 1951 as he was neither a partner in the Partnership Firm nor the Director of the Company on the date of his nomination in February, 2017 nor on any date subsequent to it.

18. In view of the forgoing findings and analysis based on documentary evidence, the opinion of Election Commission of India under Clause (2) of the Article 192 of the Constitution of India on the Reference dated 17th May, 2017 received from the Governor of Goa is that Shri Digamber Vasant Kamat, a Member of the Legislative Assembly of Goa from Margao Assembly Constituency, has not incurred disqualification, for being member of that Assembly, under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

19. Hence, the opinion of the Election Commission of India is hereby tendered to the Governor of Goa under Clause (2) of the Article 192 of the Constitution of India that Shri Digamber Vasant Kamat is not disqualified under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

D. Accordingly, acting on the opinion tendered by the Election Commission of India, as required under Article 192(2), I hereby order that

Shri Digamber Vasant Kamat, Member of the Legislative Assembly, Goa from Margao Assembly Constituency is not disqualified under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951. The petition is hereby disposed off accordingly.

Raj Bhavan,  
Dona Paula, Goa 403004  
Dated: 9th September, 2017.

*Mridula Sinha,*  
Governor of Goa.

#### ELECTION COMMISSION OF INDIA

Nirvachan Sadan,  
Ashoka Road,  
New Delhi-110001.

#### REFERENCE CASE No. 7(G) OF 2017

#### **[Reference from the Governor of Goa under Article 192 (2) of the Constitution of India]**

*In re: Reference Case No. 7(G) of 2017 - Reference received from the Hon'ble Governor of Goa under Article 192(2) of the Constitution of India seeking opinion of the Election Commission on the question of alleged disqualification of Shri Digamber Vasant Kamat, Member of the Legislative Assembly of Goa under Article 192 of the Constitution of India.*

#### OPINION

This is a reference dated 22nd May, 2017, received from the Governor of Goa seeking opinion of the Election Commission of India under Article 192 (2) of the Constitution of India, on the question whether Shri Digamber Vasant Kamat, a Member of the Legislative Assembly of Goa from Margao Assembly Constituency, has become subject to disqualification, for being member of that Assembly, under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

2. In the said reference, the question of disqualification arose because of a petition dated 28th April, 2017, filed by Shri Shirish Kamat, Salcete-Goa (hereinafter the "Petitioner") before the Governor of Goa, whereby the Petitioner has sought disqualification of Shri Digamber Vasant Kamat (hereinafter the "Respondent") under Article 190 (3) (a), and Article 191 (1) (a) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951 (hereinafter the "1951 Act").



3. The facts of the case, as disclosed in the said petition, are as follows:

4. The Respondent established a Partnership firm, named M/s Bharat Construction Engineers & Builders (hereinafter the "Partnership Firm"), on 09th December, 1980 a got it registered on 06th January, 1982 with the Civil Registrar, Goa. At the time of the registration, the Partnership Firm consisted of five partners, namely, the Respondent a his brother Shri Gurudas Kamat, Shri Kiran Vasant Naik and his brothers Shri Vinod Naik and Shri Santosh Naik. The Partnership Firm was reconstituted subsequently from time to time. The records obtained by the petitioner under the Right to Information from the office of the Civil Registrar, Salcete show that the Partnership Firm was reconstituted subsequently from time to time. The changes in partners are detailed out as follows:

Date of change in Partnership	Name of Partners
19th October, 1989	1. Shri Kiran Vasant Naik. 2. Smt. Asha Kamat (Respondent's wife).
30th November, 1993	1. Shri Kiran Vasant Naik. 2. Respondent.
22nd January, 1996	1. Shri Kiran Vasant Naik. 2. Smt. Asha Kamat (Respondent's wife).
1st April, 2005	1. Shri Kiran Vasant Naik. 2. Shri Satish Lavande (Respondent's brother-in-law).

Thus, since 01st April, 2005, the Partnership Firm consisted of two partners, namely, Shri Kiran Naik and Shri Satish Lavande.

5. The Partnership Firm was registered with the Goa PWD/Water Resources Department (WRD) under three categories, namely (a) Water Supply & Waste Water Disposal, (b) Buildings and (c) Roads, Bridges and Land Development. The details of the renewed registration of the Partnership Firm as a contractor under the above mentioned categories are as follows:

The Partnership Firm was registered as a Class II contractor under the category of Water Supply & Waste Water Disposal on 06th July, 1984 [Registration No. WS&WWD (II-6)/84]. The registration of the Partnership Firm as a contractor under the same category was renewed on 11th February, 1999 [Registration No. WS&WWD (II-15)/99] till 30th September, 2001. This registration was

further renewed as a Class I-B contractor [Registration No. WS&WWD (I-B-24)/2002] vide letter dated 02nd September, 2002 till 01st September, 2007.

The registration of the Partnership Firm as a contractor under the category of Hydraulics and Irrigation was renewed as a Class I-B contractor [Registration No. H&I (I-B-1)/91] vide letter dated 24th August, 1993 till 02nd April, 1998. The registration under the same category was renewed again as a Class I-B contractor [Registration No. H&I (I-B-1)/99] vide letter dated 12th February, 1999 till 02nd February, 2003. This registration was further renewed as a Class I-A contractor [Registration No. H&I (I-A-1)/2003] vide letter dated 21st October, 2003 till 21st October, 2008.

6. A company, named, Apollo Engineers and Contractors Pvt. Ltd. (hereinafter "Company") was incorporated on 13th February, 2006. Clause 33 of the Articles of Association (AOA) of the Company states that the Company has two directors, namely, Shri Kiran Naik and Shri Satish Lavande. A Memorandum of handing over and taking over was executed on 06th January, 2007, which stated that the said Partnership Firm was taken over by the Company on 13th February, 2006 along with all assets, liabilities and enlistment with the PWD in different categories. Another Memorandum was made on 06th January, 2007 stating that the benefits, liabilities and agreements (including all contracts entered or received by the Partnership Firm from the PWD/WRD) of the Partnership Firm were transferred to the Company on 13th February, 2006.

7. The Partnership firm vide its letter dated 05th June, 2006 requested the PWD, Altinho, Panaji to convert the name of the contractor from that of the Partnership Firm to the Company.

8. The PWD vide its letter dated 24th September, 2007 renewed and converted the registration of the Partnership Firm in the name of the Company under the Water Supply and Waste Water Disposal category as Class I-B contractor. This registration was valid till 1st September, 2012.

Similarly, the registration of the Company under the category of Water Resources Work including Hydraulics & Marine Works (WR) as a Class I-A contractor [Registration No. WR (I-A-1)/2003] was extended vide letter dated 27th June, 2007 till 21st October, 2008. The registration of the Company under the same category was renewed as a Class I-A contractor [Registration No. WR (I-A-1)/2003] vide letter dated 16th September, 2008 till 21st October, 2013.



Thereafter, the registration of the Company under the Water Supply and Waste Water Disposal category was renewed as a Class I-B contractor [Registration No. WS&WWD(I-B-24)/2013] vide letter dated 7th January, 2013 till 01st September, 2017.

9. In the meantime, there was a change in the directorship of the Company. Form 32 shows that Shri Yogiraj Kamat, son of the Respondent, was appointed as the Director of the Company on 25th June, 2013 and on the same day, Shri Satish Lavande ceased to be the Director of the Company.

10. After the change in the Directors of the Company, the registration of the Company under Water Supply and Waste Water Disposal category was further renewed as a Class I-B contractor [Registration No. WS&WWD (I-B-24)/2014] vide letter dated 10th November, 2014 till 01st September, 2017.

Also, the registration of the Company under Class I-A in the category of Water Resources Work including Hydraulics & Marine Works (WR) was extended vide letter dated 21st January, 2014 till 21st October, 2018.

11. The Respondent contested and was elected as an MLA on various occasions. The details of the election are produced below:

Date of nomination	Date of Election
November/December, 1994	December, 1994.
May/June, 1999	June, 1999.
May, 2002	30th May, 2002.
May, 2005	May, 2005.
April, 2007	April, 2007.
The Respondent was sworn-in as the Chief Minister of Goa on 08th June, 2007. He served as the CM till 06th March, 2012.	
19th February, 2017	11th March, 2017.

12. The Petitioner has placed reliance on the opinion dated 10th January, 2017 tendered by the Commission in the case of disqualification of Shri Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly to state that the Respondent in this case is disqualified under Section 9A of the 1951 Act. The Petitioner has also relied on the case of *Sewaram v. Sobaran Singh*, AIR 1993 SC 212. The Petitioner has stated that Shri Kamat has subsisting contracts with the government through his proxies, Smt. Asha Kamat (his wife) and Shri Yogiraj Kamat (his son).

13. The factual and legal averments raised by the Petitioner are summarised as follows:

- (a) The Respondent should be disqualified for corrupt practices under Articles 190(3)(a)

and 191 (1)(a) of the Constitution of India read with Section 8A of the 1951 Act for allotting works to the Company at a price more than 50% above the estimated cost of tenders during the period when the Respondent was the Chief Minister of Goa.

- (b) The Respondent should be disqualified for subsisting government contracts under Section 9A of the 1951 Act as he continued with the work orders of the Company through his proxies, namely, his wife Smt. Asha Kamat, his brother-in-law Shri Satish Lavande and his son Shri Yogiraj Kamat.

14. The findings of the Commission on the questions raised by the Petitioner are as follows:

15. The Petitioner has argued that the Respondent is disqualified under Section 8A of the Act of 1951 as the Company was awarded government contracts at a price more than fifty percent above the estimated cost of tenders during the period when the Respondent was the Chief Minister of Goa.

The determination of disqualification under the Section 8A of the Act of 1951 requires a prior order of a the High Court under Section 99 of the said Act, finding a person guilty of commission of corrupt practice, as defined in Section 123 of this Act. The relevant provision is produced below:

*8A. Disqualification on ground of corrupt practices.— (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:*

*Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.*

*(2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.*



(3) *Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.*

The Petitioner has not produced any order to such effect by any High Court and hence, the Commission is of the view that the Respondent cannot be disqualified under Section 8A of the Act of 1951.

16. The Petitioner has further argued that the Respondent is disqualified under Section 9A of the Act of 1951. The Petitioner has stated that the Company was awarded a contract dated 17th December, 2016 by PWD, Margao-Goa and the same was subsisting even after the Respondent was elected in March, 2017. It is argued that the Respondent is acting as a Director of the Company through the proxy of his son, Shri Yogiraj Kamat and thus he is disqualified for subsisting contracts under Section 9A of the 1951 Act. The Petitioner has also placed reliance on the opinion tendered by the Commission in the case of disqualification of Shri Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly and on the case of Sewaram v. Sobaran Singh, AIR 1993 SC 212 to contend that the Respondent be disqualified for subsisting contracts entered by the Company with PWD. The Petitioner has stated that the Respondent has subsisting contracts with the government through his proxies, Smt. Asha Kamat (his wife) and Shri Yogiraj Kamat (his son). He has stated that just as the Commission held that Shri Umashankar was managing the affairs of his Company/Partnership Firm through his proxies, similarly in this case the Respondent has entered into contracts with the State Government through his wife and son.

17. It may be noted that in the case of Shri Umashankar, the Commission, on the basis of the evidences before it, observed that he was deeply involvement in the affairs of the Company/ Firm in question. In fact, he was also Director of the Company for some period of time after his election. More importantly, it was found that payments for the Company's contracts with the PWD were in reality received by Shri Umashankar's sole proprietorship firm, thereby meaning, that Shri Umashankar was the sole beneficiary and recipient of the payments of all the contracts entered between the PWD and the Company. Based on these facts, the Commission was of the view that the Company was a facade and Shri Umashankar was misusing its separate juristic identity to evade

legal obligations under law, making it a fit case for lifting of corporate veil. Thus, as the payments for the contracts entered between the Company and PWD was received by Shri Umashankar, it meant that he had subsisting contracts with the government after his election and hence, he was disqualified under Section 9A of the 1951 Act. Similarly, the Supreme Court in Sewaram case disqualified him under Section 9A of the Representation of the People Act, 1951 on basis of his correspondence with the government regarding the contracts even after his election. Thus, neither the rationale nor ratio of the decisions of the Commission in Uma Shankar's case (supra) and of the Supreme Court in Sewaram's case (supra), relied upon by the petitioner, are applicable in the facts and circumstances of the present case.

18. It may further be noted that the High Court of Andhra Pradesh in the case of *S.A.K. Mynoddin v. The Chief Election Commissioner, Secretariat Buildings, Hyderabad and Ors.*, 2013 (1) ALT 292, did not disqualify the MLA on the facts that he tendered his resignation from the post of Managing Director, intimated the same to the Registrar of Companies and transferred all his shares to his wife prior to the filing of nomination papers. In the present case, no evidence has been produced to show that the Respondent was personally associated with the Company or its affairs in any manner. Hence, in the given facts, the Respondent does not attract disqualification under Section 9A because no evidence is produced to either show that the Company is managed by him or that he has entered into a government contract in the course of his business or trade.

19. The disqualification under Section 9A of the Act of 1951 is attracted when "*there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.*" It has been laid down by the Supreme Court in *Election Commission of India v. Saka Venkata Rao*, AIR 1953 SC 210 that Article 192 read along with Articles 190(3)(3) and 191(1) is applicable only to disqualifications to which a member of the State Legislature becomes subject after he is elected as such member. A similar view was taken by the Supreme Court in another case of *Brundaban Nayak v. Election Commission of India and Anr.*, AIR 1965 SC 1892 where the Court while referring to the ratio laid under the judgement of *Saka Venkata Rao* said that the disqualification, to which Article 191 (1) refers, must be incurred subsequent to the election of the member. The relevant paragraph is as thus:



*"7.... It is well-settled that the disqualification to which Art. 191(1) refers, must be incurred subsequent to the election of the member. This conclusion follows from the provisions of Art. 190(3)(a). This Article refers to the vacation of seats by members duly elected. Sub-Article (3) (a) provides that if a member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in Clause (1) of Art. 191, his seat shall thereupon become vacant. Incidentally, we may add that corresponding provisions with regard to the disqualification of members of both Houses of Parliament are prescribed by Articles 101, 102 and 103 of the Constitution. It has been held by this Court in Election Commission, India v. Saka Venkata Subba Rao and Union of India—Intervener/that Articles 190(3) and 192(1) are applicable only to disqualifications to which a member becomes subject after being elected as such.*

It is observed that as per the records produced by the Petitioner, the Respondent was neither a Director nor a shareholder, or promoter of the Company at any given point of time. Thus, there are no subsisting contracts of the Respondent with the State Government in the course of his trade or business. Hence, the Respondent has not incurred disqualification under Section 9A of the Act of 1951 as he was neither a partner in Partnership

Firm nor the Director of the Company on the date of his nomination in February, 2017 nor on any date subsequent to it.

20. In view of the forgoing findings and analysis based on documentary evidence, opinion of Election Commission of India under Clause (2) of the Article 192 of Constitution of India on the Reference dated 22nd May, 2017 received from the Governor of Goa is that Shri Digamber Vasant Kamat, a Member of the Legislative Assembly of Goa from Margao Assembly Constituency, has not incurred disqualification, for being member of that Assembly, under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

21. Hence, the opinion of the Election Commission of India is hereby tendered to the Governor of Goa under Clause (2) of the Article 192 of the Constitution of India that Shri Digamber Vasant Kamat is not disqualified under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

O. P. Rawat,  
Election Commissioner.

A. K. Joti,  
Chief Election  
Commissioner.

Place: New Delhi,  
Date: 01-08-2017.

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Published and Printed by the Director, Printing & Stationery,  
Government Printing Press,  
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 9.00

PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA-238/350-9/2017.